IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 9TH NOVEMBER 2006 / 18TH KARTHIKA 1928

RSA.No. 931 of 2006()

AS.164/2000 of III ADDL. DISTRICT COURT, KOLLAM
OS.787/1994 of PRL.M.C., KOLLAM

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APPELLANT/APPELLANT NO.2/DEFENDANT NO.2:

VIJAYAN, SON OF H.K.G. PILLAI,
QUILON GAS SERVICE, L.P.G. DISTRIBUTOR,
THAMARAKKULAM, KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR
SRI.K.P.SUJESHKUMAR

RESPONDENTS: RESPONDENT AND 3RD APPLNT./PLNT.& 3RD DEFNDT.

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1. REMANI, W/O. KRISHNAN,
ATTAPPALLI KIZHAKKE MADOM, KATCHERI WARD,KOLLAM.

2. RAVEENDRAKUMAR,
SREE VIHAR, NEAR GOT. H.S., VARKALA.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 09/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

R.S.A.No. 931 OF 2006-C

DATED THIS THE 9th DAY OF NOVEMBER, 2006

J U D G M E N T

The second defendant in O.S.No.787/94 on the file of Principal Munsiff's Court, Kollam is the appellant in this second appeal. The said suit instituted by the first respondent herein was one for a prohibitory and mandatory injunction.

2. The facts proved and as concurrently found are as follows:

The plaint A schedule property admeasuring 4 cents is abutting the second road from H & C Road to Thilleri which runs East-West along the northern boundary of the plaint A schedule property. The said road joins H & C Road on the west . The plaint B schedule property is a way running north-south along the western boundary of the plaint A schedule property and leading on the north to the second Road from H & C Road to Thilleri. Plaint A schedule property was purchased by the plaintiff as per Exhibit A2 dated 9.9.1994 from one Viswanathan who in turn acquired the property as per Exhibit A1 document dated 30.6.1973. The vendor of Viswanathan on the same day had executed Exhibit B1 sale deed dated 30.6.1973 assigning to the 3rd defendant 14 cents of land lying further to the south of the plaint A schedule property. The case of the plaintiff as found by the

courts below is that Viswanathan who had 5 cents of property while assigning plaint A schedule property to the plaintiff as per Exhibit A2 had left 1 cent of land on the western side of plaint A schedule property for ingress and egress to the property. The recitals containing the reservation of the way also makes mention of the provision made to the godown which is obviously referring to the appellant who has an indane LPG godown in the 14 cents of land. The plaintiff alleged that the defendants by putting up an iron gate on the northern end of plaint B schedule way which touches the second Road from H & C Road to Thilleri was interfering with the plaintiff's right to use the plaint B schedule way along which the defendants too had only a right of user and sought the prohibitory and mandatory injunction.

3. The suit was resisted mainly on the ground that as per Exhibit B1 sale deed the second defendant was given an exclusive right to use the way in question. The above contention was repelled by the courts below. Exhibit B1 admittedly does not contain any reservation or a right to use plaint B schedule way for access to the second road from H & C Road to Thilleri. The way which is referred to in Exhibit B1 as well as in Exhibit A1 is the very same second road from H & C Road to Thilleri which starts from H & C Road on the west. Hence by relying on the recitals in Exhibit B1, the defendant could not have claimed any

exclusive right to use plaint B schedule way for access to the second road from H & C Road to his 14 cents property. No doubt, on actual calculation extent of the plaint B schedule property is slightly more than 1 cent. But that does not in any way advance the case of the appellant. The trial court, apart from granting a prohibitory injunction, granted a mandatory injunction as prayed for directing the defendants to remove the iron gate. The lower appellate court modified the decree by saying that the appellant should provide a key to the plaintiff for using of the very same iron gate. I do not find any question of law much less any substantial question of law in the findings recorded by the courts below. They are pure findings of fact. This second appeal is, therefore, dismissed in limine in the light of the decision of the Apex Court in **Gurdev Kaur and others v. Kaki and others (AIR 2006 SC 1975)**.

V.RAMKUMAR, JUDGE

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